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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086-2418-02]

RIN 0648-XA904

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2012 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2012 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. This action establishes the allowable 2012 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: The final specifications for the 2012 Atlantic bluefish fishery are effective [insert date 30 days after the date of publication in the FEDERAL REGISTER], through December 31, 2012.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TALs (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

Pursuant to § 648.162, the annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for

reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the Federal Register, and after considering public comment, NMFS publishes final specifications in the Federal Register. A proposed rule for this action published in the Federal Register on February 15, 2012 (77 FR 8776), and comments were accepted through March 1, 2012.

Final 2012 Specifications

A description of the process used to estimate bluefish stock status and fishing mortality, as well as the process for deriving the ACL and associated quotas and harvest limits, is provided in the proposed rule and in the bluefish regulations at §§ 648.160-162. The stock is not overfished or experiencing overfishing, and the catch limits described below reflect the best available scientific information on bluefish. The final 2012 bluefish ABC, ACL, and ACT are specified at 32.044 million lb (14,535 mt).

The ACT is initially allocated between the recreational fishery (83 percent = 26.597 million lb, 12,064 mt) and the commercial fishery (17 percent = 5.448 million lb, 2,471 mt). After deducting an estimate of recreational discards (commercial discards are considered negligible), the recreational TAL would be 22.819 million lb (10,350 mt) and the commercial TAL would be 5.448 million lb (2,471 mt).

However, the FMP specifies that, if 17 percent of the ACT is less than 10.5 million lb, and recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the ACT. The recreational harvest limit (RHL) would then be adjusted downward so that the ACT would be unchanged. Based on updated data, the recreational fishery landed 11,892,696 lb

(5,394 mt) of bluefish in 2011. Assuming recreational landings in 2012 are consistent with those from 2011, the Council's proposed transfer of 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector can be approved. This results in an adjusted commercial quota of 10.5 million lb (4,763 mt), and an adjusted RHL of 17.766 million lb (8,059 mt).

Final RSA, Commercial Quota, and RHL

Three projects that will utilize bluefish RSA were approved by NOAA's Grants Management Division. A total RSA quota of 491,672 lb (223 mt) was approved for use by these projects during 2012. Proportional adjustments of this amount to the commercial and recreational allocations results in a final commercial quota of 10.317 million lb (4,680 mt) and a final RHL of 17.457 million lb (7,919 mt).

Final Recreational Possession Limit

The current recreational possession limit of up to 15 fish per person is maintained to achieve the RHL.

Final State Commercial Allocations

The final state commercial allocations of the 2012 commercial quota are shown in Table 1, based on the percentages specified in the FMP.

Table 1. Final Bluefish Commercial State-by-State Allocations for 2012 (including RSA deductions)

State	Percent Share	2012 Council-Final Commercial Quota (lb)	2012 Council-Final Commercial Quota (kg)
ME	0.6685	68,972	31,285
NH	0.4145	42,765	19,398
MA	6.7167	692,986	314,333

RI	6.8081	702,416	318,611
CT	1.2663	130,649	59,261
NY	10.3851	1,071,466	486,009
NJ	14.8162	1,528,639	693,379
DE	1.8782	193,781	87,897
MD	3.0018	309,707	140,481
VA	11.8795	1,225,649	555,945
NC	32.0608	3,307,827	1,500,405
SC	0.0352	3,632	1,647
GA	0.0095	980	445
FL	10.0597	1,037,894	470,781
Total	100.0001	10,317,362	4,679,878

Comments and Responses

The public comment period for the proposed rule ended on March 1, 2012. Five comments were received on the proposed rule. A summary and response to the concerns raised by the commenters are included below.

Comment 1: One commenter generally criticized the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission for using poor data and allowing overharvest of bluefish, but provided no clear evidence to support their claims.

Response: Atlantic bluefish are not overfished, nor are they subject to overfishing; therefore, there is no scientific basis for making changes to the quotas based on this comment. NMFS used the best scientific information available and selected specifications for the bluefish fishery that are consistent with the FMP and recommendations of the Council.

Comment 2: Three commenters opposed the quota transfer from the recreational sector to the commercial sector. They suggested that the transfer would increase the total takes from the fishery overall and allow the commercial sector to harvest the most mature fish which would lead to an unsustainable fishery. Additionally, they commented that the increased commercial

quota as a result of the transfer allows commercial fishermen to take fish once reserved for the recreational sector.

Response: These comments included no scientific justifications for decreasing or eliminating the transfer between sectors. NMFS used the best scientific information available and selected specifications for the bluefish fishery that are consistent with the FMP and recommendations of the Council. Bluefish are not considered overfished or subject to overfishing, and the recreational sector is not projected to harvest its allocation. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents.

Comment 3: A charter/party boat operator in the Atlantic bluefish fishery in Massachusetts was supportive of the proposed ACL.

Response: NMFS agrees that the approved ACL meets the requirements of the Atlantic Bluefish FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866. This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of analyses completed to support the action. No significant issues were raised by the public comment in response to the IRFA, other than the

comment noted above. A public copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Five comments were submitted on the proposed rule. However, none were specific to the IRFA or to the economic impacts of the proposed rule more generally.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the final rule.

An active participant in the commercial sector was defined as any vessel that reported having landed 1 or more lb (0.45 kg) in the Atlantic bluefish fishery in 2010 (the last year for

which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast seafood dealer reports were used to identify 718 vessels that landed bluefish in states from Maine through North Carolina in 2010. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 732 vessels that landed bluefish in North Carolina, and 827 vessels that landed bluefish on Florida's east coast. Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible. Bluefish landings in South Carolina and Georgia were near zero in 2010, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2010. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota contained in this final rule is 10 percent higher than the 2011 quota and 113 percent higher than actual 2011 bluefish landings. All affected states will receive increases in their individual commercial quota allocation in comparison to their respective 2011 individual state allocations. However, the magnitude of the increase varies depending on the state's relative percent share in the total commercial quota, as specified in the

FMP.

The RHL contained in this final rule is approximately 2 percent lower than the RHL in 2011. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Because the 2012 RHL is greater than the total estimated recreational bluefish harvest for 2011, it does not constrain recreational bluefish harvest below a level that the fishery is anticipated to achieve. The possession limit for bluefish will remain at 15 fish per person, so there should be no impact on demand for party/charter vessel fishing and, therefore, no impact on revenues earned by party/charter vessels. No negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues associated with the proposed RSA quota were analyzed and are expected to be minimal. Assuming that the full RSA quota 491,672 lb (223 mt) is landed and sold to support the proposed research projects, then all of the participants in the fishery would benefit from the improved fisheries data yielded from each project.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery.

In addition, copies of this final rule and guide (i.e., permit holder letter) are available upon request, and posted on the Northeast Regional Office's website at www.nero.noaa.gov.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 24, 2012.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs,
National Marine Fisheries Service.

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